

HARPER FLOOR AMENDMENT

SENATE AMENDMENTS TO S.B. 1038

(Reference to printed bill)

1 Page 1, between lines 1 and 2, insert:

2 "Section 1. Section 13-3705, Arizona Revised Statutes, is amended to
3 read:

4 13-3705. Unlawful copying or sale of sounds or images from
5 recording devices; true name and address of
6 articles; definitions; classification

7 A. A person commits unlawful copying or sale of sounds or images from
8 recording devices by knowingly:

9 1. Manufacturing an article without the consent of the owner.
10 2. Distributing an article with the knowledge that the sounds thereon
11 have been so transferred without the consent of the owner.

12 3. Distributing or manufacturing an article on which sounds or images
13 have been transferred which does not bear the true name and address of the
14 manufacturer in a prominent place on the outside cover, box, ~~or~~ jacket OR
15 LABEL.

16 4. Distributing or manufacturing the outside packaging intended for
17 use with articles which does not bear the true name and address of the
18 manufacturer in a prominent place on the outside cover, box, ~~or~~ jacket OR
19 LABEL.

20 5. Transferring or causing to be transferred to an article any
21 performance, whether live before an audience or transmitted by wire or
22 through the air by radio or television without the consent of the owner and
23 with the intent to obtain commercial advantage or personal financial gain.

24 6. Distributing an article with knowledge that the performance on the
25 article, whether live before an audience or transmitted by wire or through
26 the air by radio or television, has been transferred without the consent of
27 the owner.

28 B. This section shall not apply to any person or persons engaged in
29 radio or television broadcasting who transfers, or causes to be transferred,

1 any such sounds, other than from the sound track of a motion picture,
2 intended for, or in connection with, broadcast transmission or related uses,
3 including the making of commercials and films, or for archival purposes.

4 C. Subsection A, paragraphs 1 and 2 of this section apply only to
5 recordings first fixed in a phonorecord before February 15, 1972.

6 D. Notwithstanding any other law and in the absence of a written
7 agreement, the performer of a live performance is presumed to own the rights
8 to record the performance.

9 E. The person who maintains custody and control over the business
10 records of the owner is the proper witness regarding the issue of consent.

11 F. On conviction of a violation of this section, the court shall
12 order:

13 1. The forfeiture and destruction of the articles and outside
14 packaging.

15 2. The forfeiture pursuant to chapter 39 of this title of any
16 implement, device or equipment used to manufacture or distribute the article
17 or outside packaging.

18 3. THE DEFENDANT TO MAKE RESTITUTION TO ANY OWNER OR LAWFUL PRODUCER
19 OF A MASTER RECORDING, MASTER DISC, MASTER TAPE, MASTER VIDEOTAPE, MASTER
20 FILM OR OTHER DEVICE OR ARTICLE FROM WHICH SOUNDS OR VISUAL IMAGES ARE
21 DERIVED THAT HAS SUFFERED INJURY RESULTING FROM THE VIOLATION, OR TO THE
22 TRADE ASSOCIATION REPRESENTING THE OWNER OR LAWFUL PRODUCER. THE ORDER OF
23 RESTITUTION SHALL BE BASED ON THE AGGREGATE WHOLESALE VALUE OF LAWFULLY
24 MANUFACTURED AND AUTHORIZED RECORDED DEVICES CORRESPONDING TO THE
25 NONCONFORMING RECORDED DEVICES INVOLVED IN THE VIOLATION AND SHALL INCLUDE
26 INVESTIGATIVE COSTS RELATING TO THE VIOLATION.

27 G. In this section, unless the context otherwise requires:

28 1. "Article" means the tangible medium on which sounds or images are
29 recorded including any original phonograph record, disc, compact disc, tape,
30 audio or video cassette, wire, film or other medium now known or later
31 developed on which sounds or images are or can be recorded or otherwise

1 stored, or any copy or reproduction which duplicates in whole or in part the
2 original.

3 2. "Distributing" means the actual, constructive or attempted sale,
4 rental, delivery, possession, transportation, exhibition or advertisement of
5 an article with intent to obtain commercial advantage or personal financial
6 gain or to promote the sale of any goods.

7 3. "Fixation of sounds" means the master recording from which copies
8 can be made of the series of sounds constituting the sound recording.

9 4. "Manufacturing" means transferring or causing to be transferred any
10 sounds or images recorded on one article to another article with the intent
11 to distribute the article.

12 5. "Owner" means the person who owns the original fixation of sounds
13 or images embodied in the master phonograph record, master disc, master
14 compact disc, master tape, master film or other device used for reproducing
15 recorded sounds on phonograph records, discs, compact discs, tapes, films or
16 other articles on which sound is or can be recorded, and from which the
17 transferred recorded sounds are directly or indirectly derived, or the person
18 who owns the rights to record or authorize the vending of a live performance.

19 6. "Phonorecord" means the material object in which sounds other than
20 those accompanying a motion picture or other audiovisual work are fixed by
21 any method now known or later developed, and from which can be perceived,
22 reproduced or otherwise communicated directly or with the aid of a machine or
23 device. Phonorecord includes the material object in which the sound is first
24 fixed.

25 H. Unlawful copying or sale of sounds or images involving one ~~thousand~~
26 HUNDRED or more articles containing sound recordings or one hundred or more
27 articles containing audiovisual recordings is a class 3 felony. Unlawful
28 copying or sale of sounds or images involving ~~one hundred~~ TEN or more but
29 less than one ~~thousand~~ HUNDRED articles containing sound recordings or ten or
30 more but less than one hundred articles containing audiovisual recordings is
31 a class 6 felony. Unlawful copying or sale of sounds or images involving

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- 1 less than ~~one-hundred~~ TEN articles containing sound recordings or less than
- 2 ten articles containing audiovisual recordings is a class 1 misdemeanor."
- 3 Rerumber to conform
- 4 Page 1, line 7, after "D" insert "**OF THIS SECTION**"
- 5 Lines 12 and 24, after the second "A" insert "**OF THIS SECTION**"
- 6 Amend title to conform

2/21/08
8:14 AM
S: LB/jas